

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Roth	Team: Team # 6	CCRB Case #: 200514651	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/04/2005 1:24 AM	Location of Incident: Flatlands avenue and Fountain avenue	Precinct: 75	18 Mo. SOL 6/4/2007	EO SOL 6/4/2007	
Date/Time CV Reported Sun, 12/04/2005 4:42 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Sun, 12/04/2005 4:42 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Haldeman	08087	932758	075 PCT
2. POM Bilal Ates	30040	934429	075 PCT
3. POM Eliut Pena	29680	935485	075 PCT
4. POM Angelo Petkovits	20425	935505	075 PCT
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Nemesio Vera	04118	916862	073 PCT
2. SGT Larry Flunory	01232	895449	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Scott Haldeman	Abuse: PO Scott Haldeman stopped the cars in which § 87(2)(b) and others were occupants.	
B.POM Bilal Ates	Abuse: PO Bilal Ates stopped the cars in which § 87(2)(b) and others were occupants.	
C.POM Eliut Pena	Abuse: PO Eliut Pena stopped the cars in which § 87(2)(b) and others were occupants.	
D.POM Angelo Petkovits	Abuse: PO Angelo Petkovits stopped the cars in which § 87(2)(b) and others were occupants.	
E.POM Scott Haldeman	Force: PO Scott Haldeman pointed his gun at § 87(2)(b)	
F. An officer	Discourtesy: An officer spoke obscenely to § 87(2)(b)	
G. An officer	Abuse: An officer seized § 87(2)(b) s property.	

Synopsis

§ 87(2)(b) filed the initial complaint on the CCRB's Call Processing System on December 4, 2005 (encl. 3). On December 4, 2006 at approximately 1:24 a.m., he and his friends were leaving Red Lobster in the Gateway Mall in Brooklyn when a police van blocked them at a red light (**Allegations A-D**). Officers exited the van and proceeded towards the cars. PO Haldeman had his gun drawn and pointed at a car occupied by § 87(2)(b) (**Allegation E**). An officer then told the drivers to "shut off the fucking cars" (**Allegation F**). An officer then proceeded to explain to § 87(2)(b) that they had been stopped for street racing. § 87(2)(b) explained that he had a § 87(2)(b) who was a police officer and produced a PBA card. The officers took his PBA card and explained that he would need to have his § 87(2)(b) call to get it back for him (**Allegation G**). The drivers were then issued summonses and left the scene. Following the incident, § 87(2)(b) and § 87(2)(b) went to a precinct to file a complaint regarding the incident. At the precinct, an officer provided them with the number for CCRB. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On January 20, 2006, the CCRB interviewed § 87(2)(b) (encl. 5). § 87(2)(b) is a § 87(2)(b)-old black male. He is 6'0, 205 pounds with black hair and brown eyes.

On December 4, 2005 at approximately 1:45 a.m., § 87(2)(b) was returning from Red Lobster in the Gateway Mall. He had been at the restaurant for about an hour and left at 11:30 p.m. He had eaten dinner with two of his friends, § 87(2)(b) and § 87(2)(b) whose last name he did not know. They did not have anything to drink with dinner. After leaving the restaurant, they remained in the parking lot for approximately 30-45 minutes talking. At approximately 1 a.m. the three individuals left the location in two separate cars. § 87(2)(b) was driving a black Dodge Neon, NY plate § 87(2)(b). § 87(2)(b) was driving the other car, a white Honda Civic, with § 87(2)(b) in the passenger seat. They drove out of the mall and proceeded for approximately a quarter of a mile down a curvy road before they arrived at Flatlands Avenue. § 87(2)(b) drew a map to indicate these relative positions. He explained that they were not driving erratically and were observing all traffic regulations. When he was stopped at the intersection, there were two cars in front of § 87(2)(b) a white Lexus GS300 and a Honda CRV, § 87(2)(b) and § 87(2)(b) were in the car to his left and there were approximately four cars behind them at the light. § 87(2)(b) observed a police van driving towards them down Fountain Avenue, at which time § 87(2)(b) observed several cars behind his turn around and drive the opposite direction down Flatlands Avenue. They were stopped at a streetlight at the corner of Flatlands and Fountain for approximately 30 seconds when the marked police van stopped in the intersection, blocking the forward progress of the cars.

When the police van stopped in front of him, five uniformed officers immediately exited. PO1 was a light skinned black male with a slim build. He had short hair, was clean cut, and was the driver of the van. PO3 was a Hispanic male. PO1 and PO3 walked down the middle of the row of cars instructing the drivers to turn off their engines. PO2 was a short Hispanic male with a heavy build, who § 87(2)(b) identified as a sergeant because of the triangular stripes on his sleeve. PO2 and PO4, a white male, walked down the left side of the row of cars, next to the driver's side of the car that § 87(2)(b) was driving. PO5, was a white male with dirty blond spiked hair, 5'9 with a medium build. He looked to be about 28 years old and § 87(2)(b) likened him to the ESPN boxing analyst Max Kellerman. PO5 followed these officers down the middle of the row of cars with his gun pointed. He came directly to § 87(2)(b)'s car with his gun pointed at his windshield. PO1 told everyone to shut off their cars. § 87(2)(b) stated that he first tried to talk to PO2 but that he would not listen to him. PO5, who was sitting in the back of the van, followed and told everyone to shut off their cars with his gun still pointed and continued around the back of § 87(2)(b)'s car. He holstered his gun and went back to the CRV to obtain their license and registration. He

later explained that their precinct is a street racing area and is hard on street racing. PO1 explained to § 87(2)(b) that he could go to the precinct and talk to the officers there. PO1 is the officer who took § 87(2)(b)'s license and registration. He and the other officers returned to the van, remained there for about 30-45 minutes, and issued him one summons for disorderly conduct. PO5 took information from § 87(2)(b) but § 87(2)(b) was not sure what this information was. § 87(2)(b) did not raise his voice or curse at the officers. He did not feel that he had done anything that would elicit a disorderly conduct summons. On the summons, the officer indicated that the incident occurred at Gateway Drive. § 87(2)(b) asked why he wrote this when they were a quarter mile away. The officer responded that they thought that was where they had come from. § 87(2)(b) remained in his car for the entire incident, as did all the other drivers. § 87(2)(b) saw the officers give the other drivers pink slips. § 87(2)(b) was trying to talk to PO5 after being issued the summons. He stated that he had nothing more to say. § 87(2)(b) then asked for his name and badge which was provided. § 87(2)(b) did not hear any mention of a PBA card at any point during this incident but that one might have been taken from § 87(2)(b). § 87(2)(b) stated that he has many friends who are officers and have told him to remain calm if he is ever stopped, which he did.

After the incident, § 87(2)(b) and § 87(2)(b) went to a precinct to report the incident. He did not know what precinct it was but knew that it was in East New York. It took them approximately 20-25 minutes to get there. At the precinct, they encountered PO6, who was a white male officer in his mid 30's, 6'3-6'4 with a large build. § 87(2)(b) told him that they did not like the way that they were treated. PO6 told them that there was not much that they could do at the precinct but that they should call the number and file the complaint. § 87(2)(b) stated that this was approximately an hour after the summons was issued.

§ 87(2)(b)

§ 87(2)(b) made his initial complaint on the CCRB's Call Processing System on December 4, 2005 (encl. 3). The CCRB contacted § 87(2)(b) by telephone on December 16, 2005 at which time he provided a brief statement (encl. 4). § 87(2)(b) failed to cooperate with several attempts by the CCRB to conduct an in person interview.

§ 87(2)(b) stated that on the date of the incident he and his friends had just finished eating at Red Lobster. They were returning home around 1:20 a.m. and were on the corner of Flatlands at a streetlight when a police paddywagon cut off the two cars that he and his friends were in. The number of the paddywagon was 5957. The cars behind them made U-turns and left the scene. PO1, who was identified as PO Haldeman at the time of the incident, jumped out of the paddywagon with his gun drawn and pointed at the cars. Four other officers got out. PO Haldeman told them to "shut off the fucking cars." The officers checked the driver's licenses and registration and decided that everything was in order. The officers told them that they had been street racing. The officers said that they were in a street racing area so they were allowed to pull them over. § 87(2)(b) § 87(2)(b) is on the force and he showed the officers his PBA card. The officers took his PBA card and said that if he wanted it back he needed to get his § 87(2)(b) to call. The officers told them the summonses were for street racing but on the summons it says disorderly conduct. § 87(2)(b) friends § 87(2)(b) and § 87(2)(b) were the drivers and they were issued the summonses. § 87(2)(b) supplied contact information for § 87(2)(b) and said he would get § 87(2)(b) information. After the incident ended, § 87(2)(b) went to the precinct. Additional officers were helpful in telling § 87(2)(b) how to get his PBA card back. Between December 7, 2005 and April 10, 2006, the CCRB placed several phone calls and sent several letters to § 87(2)(b). He twice scheduled interviews at the CCRB which he later failed to appear for. To date, § 87(2)(b) has failed to cooperate with this investigation.

Results of Investigation

Attempts to ID and Locate Additional Witnesses

On April 10, 2006, the CCRB identified § 87(2)(b) as the individual identified as § 87(2)(b) by § 87(2)(b) and § 87(2)(b). An address was located using the DMV database and letters were sent to this address on April 13, 2006 and May 12, 2006. A Verizon subpoena for a telephone number produced negative results.

The memo book for PO Petkovits identifies additional people that were stopped at this time for the same infraction as the complainants. § 87(2)(g)

Officer Statements

PO Scott Haldeman: CCRB Statement

On March 14, 2006 PO Scott Haldeman was interviewed at the CCRB (encl. 8). PO Haldeman is a § 87(2)(b)-old white male. He is 6'0, 185 pounds with blonde hair and blue eyes. On December 4, 2005 he worked patrol from 11:15 p.m. to 7:50 a.m. with PO Ates and PO Petkovits. He was assigned to a marked police van. PO Haldeman had no memo book entries regarding the incident (encl. 6).

PO Haldeman stated that at December 4, 2006 he was riding in a marked van with three other officers patrolling the south end of the 75th precinct. He arrived at the intersection of Gateway Drive and Erskine Street. This intersection is right by the Gateway mall and is known as a common street racing location. At this intersection he observed approximately 30 vehicles parked at an angle on Erskine Avenue observing an illegal street race. These cars were all in violation of VTL laws. He did not observe a race take place but there were cars lined up to race. When he arrived at the intersection the vehicles departed. Approximately 10 vehicles went north on Erskine onto the Belt Parkway and approximately 20 vehicles made an illegal u-turn over the median to go southbound on Erskine. The police van drove around the block to block off the intersection that the cars were heading towards. They blocked the intersection and 15 cars reversed over the median and began heading in the opposite direction. Five cars remained at that intersection. PO Haldeman approached a red Dodge Neon SRT-8 that was the first at the light, a car that he had observed leave the street racing area. The vehicle began reversing while PO Petkovits was behind the vehicle. PO Haldeman drew his gun and pointed it at the car instructing the driver to turn the car off and show his hands. PO Petkovits went to a white Honda sedan that was next to the red Dodge.

PO Haldeman approached the red Dodge but did not recall who the driver was or what he looked like. PO Haldeman asked for his license, registration and proof of insurance. He did not use any profanity as it is against his beliefs. He asked for his pedigree information and advised the driver why he was stopped. The drivers responded that they were not involved in the street race. The other officers obtained pedigree information from the rest of the drivers and the interaction only lasted two minutes. The officers all returned to the van and ran the licenses and prepared summonses. They remained in the van for approximately 10 or 15 minutes. PO Haldeman issued a summons to the white Honda that he had observed parked watching a drag race. The summons was issued to § 87(2)(b). He told the officers to drive safe and left the location. He recalled that a couple of the drivers may have produced PBA cards. An individual tried to give one to PO Haldeman but he did not accept it. He believed that PO Ates received a PBA card but did not recall whether he gave it back to the driver. No civilians asked for PO Haldeman's name and badge number.

PO Bilal Ates: CCRB Statement

PO Bilal Ates was interviewed at the CCRB on March 22, 2006 (encl. 11). PO Ates is a § 87(2)(b)-old white male. He is 6' tall, 240 pounds with black hair and brown eyes. On December 4, 2005, he was assigned to a marked Conditions van #5759 in the 75th precincts with PO Pena, PO Petkovits and PO Haldeman. PO Ates's memo book indicates that at 1:45 a.m. he issued 3 summonses for § 87(2)(b)

(encl. 9). § 87(2)(g)

PO Ates stated that he was the last officer to exit the van and two of the officers who exited ahead of him had their firearms drawn but not pointed. Without using any profanity, they instructed the drivers of the vehicles to remove the keys from the ignitions and hand them to the officers. PO Petkovits was approaching a white civic when the driver attempted a broken k-turn and nearly hit PO Petkovits. Once the driver realized he could not get away he stopped and gave up his keys. A couple of the drivers "played dumb", as to why they were being stopped. They tried to explain that they had just gotten off the highway. One individual stated that he had a cop on the phone but PO Ates stated that they do not get on cell phones during traffic stops. PO Ates did not recall any individuals attempt to produce a PBA card.

The officers then returned to the van and put the information in a pile and each wrote summonses randomly to the different individuals. The officers remained in the van for approximately 20 minutes. He stated that when the officers returned to the car, the same car that had been difficult before was very upset about having received the summonses and did not understand why they were getting it. None of the drivers complained about how they were treated during this incident, nor indicated their intention to file a complaint.

PO Eliut Pena: CCRB Statement

On March 29, 2006, the CCRB interviewed PO Eliut Pena (encl. 13). PO Pena is a § 87(2)(b)-old Hispanic male, 6'2, 210 pounds with black hair and brown eyes. On December 4, 2005 PO Pena worked from 10:00 p.m. to 6:35 a.m. in the conditions unit. He worked with PO Ates, PO Petkovits and PO Haldeman. He was assigned to a marked police van. PO Pena had no memo book entries regarding this incident (encl. 12). § 87(2)(g)

PO Pena stated that once the cars were stopped, he exited the van after at least two other officers. These officers exited the van with their guns drawn but not pointed. PO Pena could not recall whether or not he had his gun drawn but explained that he most likely did. PO Pena approached the front left car and requested information from the driver. This driver explained to PO Pena that he had a brother on the job. PO Pena did not respond to this and requested the information again at which point the individual was compliant.

After obtaining the information and keys from all the drivers, the officers returned to the van and decided what summonses would be issued. PO Pena could not recall what the summonses were issued for but believed that he probably had issued a summons but did not make note of it in his memo book. PO Pena exited the van and issued a summons to a vehicle but he could not recall which one.

PO Angelo Petkovits: CCRB Statement

On March 30, 2006 the CCRB interviewed PO Angelo Petkovits (encl. 15). PO Petkovits is a § 87(2)(b)-year-old white male, 6'1, 225 pounds with black hair and brown eyes. On December 4, 2005 PO Petkovits was assigned Conditions in a marked police van with PO Pena, PO Ates and PO Haldeman. PO Petkovits's memo book states that at 1:45 a.m. multiple cars were stopped at the Gateway mall for drag racing, there were multiple cars on Erskine blocking traffic, and there were people on the street as well. They were first observed from eastbound entrance to the Belt Parkway. Erskine car stops were on Vandalia and Fountain. Vehicle info- § 87(2)(b). Operator of the vehicle was § 87(2)(b) DOB § 87(2)(b) CID § 87(2)(b). Three summonses were issued- § 87(2)(b), § 87(2)(b), § 87(2)(b). Occupant § 87(2)(b) DOB § 87(2)(b) § 87(2)(b). Occupant § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) (encl. 14). § 87(2)(g)

PO Petkovits stated that he was the first officer out of the van and he proceeded to the back of the line of cars. He unholstered his gun and put it to his side. He stated that he took it out "for show." He did not point his gun at any time during the incident, nor witness any other officer do so.

PO Petkovits stopped the car on the left, which was the information contained in his memo book. He pointed at the driver to turn the car off and surrender the keys. The cars that were behind this particular car turned around and left. Approximately three to four cars were able to get away. The other officers were behind PO Petkovits doing the same thing with the other cars. Six or seven cars total were stopped. PO Petkovits obtained the information for the driver and passengers. He asked for everyone's identification and the keys immediately. The individuals were immediately compliant. He did not hear any officers make any other requests. He did not say, or hear any of the officers use profanity at any time during this incident. He did not observe any other officers have prolonged interactions with any of the drivers and PO Petkovits returned to the van along with the other officers. All the drag racers were issued disorderly conduct summonses, and the car that almost hit PO Petkovits was given a summons for backing unsafely. PO Petkovits stated that each officer wrote a summons for the car that they initially approached. When the officers returned to the vehicles they returned to the cars that they had initially approached. He did not recall any mention of a PBA card but did witness one driver tell one of the officers that someone on

a cell phone wanted to speak with them. The only car that PO Petkovits remembered specifically was the white Honda. He stated that the cars were all hooked up for racing.

Sgt. Larry Flunory & Sgt. Nemesio Vera: CCRB Statements

Sgt. Larry Flunory was interviewed at the CCRB on August 24, 2006 (encl. 17). Sgt. Flunory is a § 87(2)(b) -old black male. He is 6'0 tall, 220 pounds with black hair and brown eyes. On December 4, 2006, Sgt. Flunory worked as the Desk Sergeant at the 75th Precinct from 2305 hours until 0802 hours. Sgt. Nemesio Vera was interviewed at the CCRB on September 14, 2006 (encl. 19). Sgt. Vera is a § 87(2)(b) -old Hispanic male. He is 5'8, 160 pounds with black hair and brown eyes. On December 4, 2006, Sgt. Vera worked as the Desk Sergeant at the 73rd Precinct from 2305 hours until 0802 hours. Neither Sgt. Flunory nor Sgt. Vera had any memo book entries regarding this incident (encl. 16, 18).

Neither Sgt. Flunory nor Sgt. Vera had any recollection of the incident, nor did either or them recognize a picture of § 87(2)(b) or recall anyone coming into the precinct that evening to complain about the conduct of officers during a vehicle stop.

Police Documents

75th Precinct Roll Call

The 75th Precinct Roll Call for Tour 1 on December 4, 2005 lists PO Ates, PO Pena and PO Petkovits assigned to a Conditions Auto. Sgt. Flunory is the Desk Officer (encl. 20).

73rd Precinct Roll Call

The 73rd Precinct Roll Call for Tour 1 on December 4, 2005 lists Sgt. Vera as the Desk Officer (encl. 21).

PSA2 Roll Call

The PSA2 Roll Call for Tour 1 on December 4, 2005 lists Sgt. Arroyo as the Desk Officer. Sgt. Baksh is the Patrol Supervisor (encl. 22).

Criminal History of Civilian

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of Subject Officers

PO Eliut Pena had a refusal to provide name and shield allegation Substantiated against him in regards to CCRB case number 200602924, stemming from an incident that took place on February 10, 2006. The NYPD has not yet reached a disposition in this case. PO Haldeman, PO Ates and PO Petkovits have had no CCRB allegations substantiated against them (encl. 2).

Status of Summonses

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

At the time of his complaint, § 87(2)(b) identified the subject officer as PO Haldeman. He and § 87(2)(b) each provided detailed, accurate descriptions of PO Haldeman, and he is the officer who issued

the summons to § 87(2)(b) [REDACTED] At the time of his interview, PO Haldeman admitted that he was an active participant in the incident. § 87(2)(g) [REDACTED]

[REDACTED] The summons to § 87(2)(b) [REDACTED] was issued by PO Ates, who also admitted that he was an active participant in the incident. The 75th Precinct Roll Call for Tour 1 on December 4, 2005 shows that PO Ates was assigned to a conditions auto with PO Petkovits and PO Pena. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Undisputed Facts

It is undisputed that at the time of the incident, vehicles containing § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were stopped by police officers. It is undisputed that officers had their guns drawn and pointed at the time of the stop. It is undisputed that summonses were issued to the drivers of the vehicles.

Disputed Facts

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Assessment of Evidence

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] While § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] stated that they were not involved with the drag race, the specific cars that the officers noted as having been involved with the drag race match the descriptions given by § 87(2)(b) [REDACTED] of the cars that § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were driving. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Determination of Fact

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A: PO Scott Haldeman stopped the cars in which § 87(2)(b) [REDACTED] and others were occupants.
Allegation B: PO Bilal Ates stopped the cars in which § 87(2)(b) [REDACTED] and others were occupants.
Allegation C: PO Eliut Pena stopped the cars in which § 87(2)(b) [REDACTED] and others were occupants.
Allegation D: PO Angelo Petkovits stopped the cars in which § 87(2)(b) [REDACTED] and others were occupants.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g)

Allegation E: PO Scott Haldeman pointed his gun at § 87(2)(b) and others.

It is undisputed that PO Haldeman had his gun drawn and pointed at the time of the stop. The officers stated that when they exited the van and began to approach the vehicles, several of the cars attempted to leave the scene. Although there is some dispute as to the color of the car, PO Haldeman stated that a Dodge Neon, the same make and model of the car that § 87(2)(b) was driving, attempted to turn around and leave the scene. When § 87(2)(b) executed this move, he nearly struck PO Petkovits who was behind his car at that time. At this time, PO Haldeman drew his gun and pointed it at § 87(2)(b) while instructing him to turn off the engine. § 87(2)(g)

As noted in PD v. Gliner,

“The policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety. This policy permits officers to discourage or terminate the attempted use of deadly force against themselves by providing them with a less drastic alternative to the actual use of a firearm. Thus, the Department permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered...The cases do not appear to make a distinction between the drawing of a firearm and the pointing of it in situations where drawing a gun was found to have been reasonable in ordering a person out of a car in the course of investigating a traffic infraction or criminal activity” (PD v. Gliner, OATH Index 955/00) (encl. 1).

§ 87(2)(g)

Allegation F: An officer spoke obscenely to § 87(2)(b)
Allegation G: An officer seized § 87(2)(b) s property.

Between December 7, 2005 and April 10, 2006, the CCRB made several attempts to schedule an interview with § 87(2)(b). During this time, he failed to appear for two scheduled appointments at the CCRB and never provided an official statement in regards to the incident. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: